

BRAE CORPORATION

September 21, 1983

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
12th & Constitution, Room 2215
Washington, D.C. 20423

Dear Ms. Mergenovich:

INTERSTATE COMMERCE COMMISSION

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. Section 11303 are 2 originals and six copies of the following document:

Lease Agreement dated as of June 17, 1983 between BRAE Corporation and Colorado & Eastern Railroad Company

This document relates to 25 100-ton high sided used gondola railcars, AAR Designation GB.

The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

LESSOR: BRAE Corporation
Four Embarcadero Center, Suite 3100
San Francisco, CA 94111

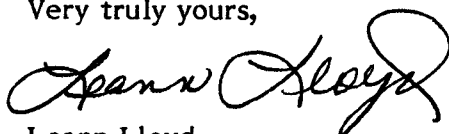
LESSEE: Colorado & Eastern Railroad Company
76 South Sierra Madre, Suite 230
Colorado Springs, CO 80903

It is requested that this document be filed and recorded under the names of the parties as set forth above. In view of the fact that it relates to the Equipment Trust Agreement, between The Connecticut Bank and Trust Company and BRAE Corporation, dated January 1, 1980, previously recorded and assigned recordation number 11498, we request that it be assigned the next available letter designation under that primary number.

I also enclose a check in the amount of \$10.00 for the required recordation fee.

Please return: (1) your letter acknowledging the filing, (2) a receipt for the \$10.00 filing fee paid by check drawn on this firm, (3) the enclosed copy of this letter and (4) both originals and five copies of the document (retaining one copy for your files) all stamped with your official recordation information.

Very truly yours,



Leann Lloyd
Legal Assistant

cc: Alfred C. Dossa

3-269A132

No. _____
Date **SEP 26 1983**

Fee \$ 10.00

ICC Washington, D.C.

RECORDATION NO. 11498-BB Filed 1425

SEP 26 1983 12 25 PM

Interstate Commerce Commission

Washington, D.C. 20423

9/26/83

OFFICE OF THE SECRETARY

**Leann Lloyd
Legal Assistant
Brae Corporation
Four Embarcadero Center
San Francisco, Calif. 94111**

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **9/26/83** at **12:25pm**, and assigned recordation number(s). **11498-BB**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

COPY

BRAE CORPORATION REGISTRATION NO. 11498-BB Filed 1453

SEP 26 1983 12 25 PM
LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT, dated as of this 17th day of June, 1983, between BRAE CORPORATION, a Delaware corporation, Four Embarcadero Center, San Francisco, California 94111 ("BRAE"), as lessor, and Colorado & Eastern Railroad Company, 76 South Sierra Madre, Suite 230, Colorado Springs, Colorado 80903 ("Lessee"), as lessee.

1. Scope of Agreement

A. BRAE agrees to lease to Lessee, and Lessee agrees to lease from BRAE, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that BRAE shall at all times be and remain the lessor of the Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The lease pursuant to this Agreement with respect to each Car shall commence when such Car has been delivered, as provided in Section 3A hereof, and shall continue until two (2) years (the "Initial Lease Term") have expired from the actual date of delivery, as provided in Section 3A hereof, for the last of the Cars described on the Schedule.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each (the "Extended Lease Term") with respect to all of the Cars described on each Schedule; provided, however, that BRAE or Lessee may terminate this Agreement at the expiration of the Initial Lease Term or any Extended Lease Term as to all, but not fewer than all, of the Cars on any Schedule by written notice delivered to the other not less than six months prior to the end of the Initial Lease Term or such Extended Lease Term, as the case may be.

3. Supply Provisions

A. After BRAE has remarked the Cars with Lessee's railroad markings as provided in Section 4A hereof, BRAE will cause the Cars to be delivered to Lessee by causing them to be diverted to Lessee's railroad tracks. Each of the Cars shall be deemed to be delivered to Lessee upon being remarked by BRAE with Lessee's railroad markings. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after execution and delivery of this Lease Agreement as is consistent with mutual convenience and economy. Due to the nature of the railroad operations in the United States, BRAE can

control nor determine when the Cars leased hereunder will actually be available for use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of a Car, the lease hereunder with respect thereto shall commence and Lessee shall pay to BRAE the rent for such Car set forth in this Agreement, commencing upon the date upon which such Car is remarked with Lessee's railroad markings. In order to move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee (the "Initial Loading"), BRAE agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and BRAE, to issue movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") interchange agreements and rules. Hereinafter, Interchange Rules shall mean all codes, rules, interpretations, laws or orders governing hire, service, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the AAR and any other organization, association, agency or governmental authority, including the ICC and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

3. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease freight cars from any other party until it shall have received all of the Cars on the Schedule or Schedules. Lessee shall load, or order the loading of, all Cars on its tracks prior to loading, or ordering the loading of, (i) any substantially similar freight cars of other railroads interchanged onto Lessee's tracks; (ii) any substantially similar freight cars placed in assigned service on Lessee's tracks subsequent to the date hereof, or (iii) any substantially similar freight cars purchased or leased by Lessee subsequent to the date hereof; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its common carrier obligations to provide transportation and services upon reasonable request therefor to shippers on its railroad tracks. In no event shall Lessee act as a switching railroad with respect to any freight cars substantially similar to the Cars (e.g., in no event shall Lessee honor the request of any shipper or other railroad to position for loading any freight car substantially similar to the Cars if there is a Car available for loading on Lessee's tracks). The priority loading granted the Cars as herein provided is of the essence of this Agreement, and, upon proper application, BRAE shall be entitled to a decree against Lessee requiring specific performance of Lessee's covenant to grant such priority loading. Lessee shall maintain sufficient records with respect to loadings and shipments to verify that it is priority loading the Cars as herein provided. Lessee shall, upon reasonable request by BRAE, furnish to BRAE its records with respect to loadings and shipments. Notwithstanding the foregoing, the provisions of this Section 3B relating to priority loading shall not apply to 6'6" high-sided gondolas used for loading of light scrap metal.

C. Additional Cars may be leased from BRAE by Lessee only upon the mutual agreement of the parties hereto. Such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by BRAE and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to manufacturer's delivery schedules, the availability of financing on terms satisfactory to BRAE and the mutual acknowledgement of the parties that the addition of such Cars is not likely to reduce Utilization (as defined in Section 6B hereof) of all Cars on lease to Lessee to less than 70 percent in any calendar quarter. If, due to any of the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule shall be

D. BRAE has at any time the right, upon 60 days written notice, to replace any or all of the Cars with new or rebuilt cars of the same general class and type, as long as Lessee will not suffer a net loss thereby of the investment tax credit allowed by section 38 and related sections of the Internal Revenue Code of 1954, as amended, if any.

A. BRAE and Lessee agree that on or before delivery of any Cars to Lessee, such Cars will be, at BRAE's sole expense, lettered with the railroad markings of Lessee ~~may also be marked with the name and/or other insignia used by Lessee~~. BRAE and Lessee further agree that any Car may also be marked with the name of BRAE and any other information required by an owner or secured party under a financing agreement entered into by BRAE in connection with the acquisition of such Car. All such names, insignia and other information shall comply with all applicable regulations.

C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; provided, however, that BRAE shall not be responsible for any fee assessed by such publication for the listing or registration of Lessee itself, as distinguished from the registration of additional equipment leased to Lessee hereunder. BRAE shall, on behalf of Lessee, perform all record-keeping functions related to the use of the Cars by Lessee and other railroads in accordance with the Interchange Rules and AAR railroad interchange agreements, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as BRAE shall select. Lessee and BRAE agree that BRAE shall continue to provide such record keeping functions until such time as BRAE gives Lessee written notice of discontinuance and Lessee approves such discontinuance.

* in accordance with standard AAR format.

5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, BRAE will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its Initial Lease Term and any Extended Lease Term, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall, pursuant to the Interchange Rules, inspect all Cars interchanged to it to insure that such Cars do not contain refuse, and are in good repair, condition and working order. Lessee shall also secure from interchanging lines any documentation prescribed by the Interchange Rules for damaged Cars and promptly mail such documentation to BRAE. Lessee shall be liable to BRAE for any cleaning, servicing, or repairs required but not noted at the time of interchange. Lessee shall promptly report to BRAE any damage or other condition of any Car which Lessee considers will make such Car unsuitable for use. Lessee hereby transfers and assigns to BRAE all of its right, title and interest in any warranty in respect of the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by BRAE at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to BRAE.

B. Except as provided in Section 5A hereof, BRAE, at its sole expense, shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of BRAE, and at BRAE's sole expense, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks, in accordance with the Interchange Rules, and at rates not in excess of those published by the AAR for labor and materials, as may be reasonably requested by BRAE. BRAE shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee may make running repairs, in accordance with the Interchange Rules and standards, at BRAE's expense, to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without BRAE's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without BRAE's prior written consent, Lessee shall be liable to BRAE for any revenues lost due to such alteration and any costs reasonably incurred by BRAE to restore any Car to its condition prior to such Lessee change. Title to any such alteration, improvement or addition shall be and remain with BRAE (or its assignee).

C. Lessee will, at all times while this Agreement is in effect, be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under the Interchange Rules for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by obtaining insurance. Lessee shall also maintain bodily injury and property damage liability insurance. Lessee shall furnish to BRAE concurrently with the execution hereof, and thereafter at intervals of not more than 12 calendar months, certificates of insurance with respect to such insurance signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and BRAE (or its assignee) as their interests may appear.

D. BRAE agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues. BRAE and Lessee

will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. Lessee will send to BRAE, within five business days after receipt by Lessee from the taxing authorities, any notice of assessment of a tax which BRAE is obligated to pay pursuant hereto. BRAE shall review all applicable tax returns prior to filing.

6. Lease Rental

A. Lessee agrees to pay the following rent to BRAE for the use of the Cars:

(i) BRAE shall collect, as provided in Section 4, and retain for its own account as rent all payments earned by Lessee from other railroad companies for their use or handling of the Cars, including but not limited to mileage charges and hourly car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "Payments"). In addition, BRAE will receive, as additional rental, all monies earned by the Cars prior to their Initial Loading.

(ii) In the event damage beyond repair or destruction of a Car has been reported in accordance with the Interchange Rules and the appropriate amount due as a result thereof is received by BRAE, the damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that car hire payments ceased. Any amounts received by Lessee as a result of such damage will be promptly paid over to BRAE.

B. If at any time during a calendar quarter, the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the Utilization in such calendar quarter cannot be equal to or greater than 60 percent, BRAE may, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Cars as BRAE shall determine. BRAE shall not be responsible for any tax losses or recaptures incurred by Lessee resulting from BRAE's exercise of its termination rights pursuant hereto. For the purpose of determining Utilization, "Car Hour" shall mean one hour during which one Car is on lease hereunder, commencing on the Initial Loading of such car. For the purpose of this Agreement, "Utilization" shall mean with respect to any period a fraction the numerator of which is (x) the aggregate number of Car Hours for which Payments are earned by the Lessee during such period, and the denominator of which is (y) the aggregate number of Car Hours during such period.

C. During the term of this Agreement, if any Car remains on Lessee's railroad tracks for more than seven consecutive days, BRAE may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car remains on Lessee's railroad tracks more than seven consecutive days because Lessee has not given preference to the Cars as specified in Section 3B hereof, Lessee shall be liable for and remit to BRAE an amount equal to the Payments Lessee would have earned if such Cars were in the physical possession and use of another railroad for the entire period. BRAE shall not be responsible for any tax losses or recaptures incurred by Lessee resulting from BRAE's exercise of its termination rights pursuant hereto.

D. Lessee agrees that the mileage and car hire rates on the Cars subject to this lease shall, while this Lease remains in effect, be the maximum which may be charged under rates or regulations published by the ICC, the AAR or any successor agencies (or, if such rates or regulations no longer exist, the current rates in effect at the date hereof)

unless otherwise agreed in writing by Lessee and BRAE; provided, however, that BRAE may, if permitted by law, at its own discretion, increase such rates at any time.

E. Lessee will not grant or allow any per diem reclaim with respect to any Car without BRAE's prior written consent.

F. As an incentive to Lessee to induce Lessee to cause the Cars to be loaded as often as possible, BRAE shall pay to Lessee for each calendar month, or portion thereof, during the term of this Lease, an amount equal to the product of \$8.00 multiplied by a fraction the numerator of which is the total number of hours in said month when the Cars are off Lessee's tracks earning Payments, and the denominator of which is 24. Any such incentive payment shall be payable only out of rentals, if any, received by BRAE hereunder. If the ICC or any other governmental authority shall, at any time, issue an order the effect of which would reduce or eliminate the amount of Payments the Cars are capable of earning, BRAE shall be relieved of its obligation hereunder to make such payment to Lessee as and from the effective date of such order. All sums due Lessee hereunder from BRAE shall be paid within 70 days of the end of the calendar month in which such sums were earned.

7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent cars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by BRAE in connection with the acquisition of some or all of the Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be paid directly to such party and/or that Cars immediately be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either BRAE or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist (except as provided in Section 7A) any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or any Schedule hereto. Lessee will promptly, at its expense, take such action as may be necessary duly to discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

8. Default

A. The occurrence of any of the following events shall be an Event of Default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due.

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days thereafter.

(iii) Any act of insolvency or bankruptcy by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the laws of the United States of America or of any state.

(vii) Lessee shall be merged with or consolidated into another corporation which after such merger or consolidation shall have a net worth less than that of Lessee immediately prior thereto.

(viii) Any representation or warranty made by Lessee herein or any other document delivered to BRAE by Lessee related to this Lease shall prove to have been false or incorrect in any material respect on the date when made and such breach or default shall continue for a period of thirty (30) days after written notice to Lessee of such default has been received.

B. Upon the occurrence of any such Event of Default, BRAE may, at its option:

(i) Terminate this Agreement, proceed by any lawful means to recover damages for a breach hereof, and terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate and thereupon BRAE may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee, provided that BRAE shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to the date on which BRAE took such possession; or

(ii) Proceed by any lawful means to enforce performance by Lessee of this Agreement. Lessee agrees to bear the costs and expenses, including without limitation

reasonable attorneys' fees, incurred by BRAE in connection with the exercise of its remedies pursuant to this Section 8B.

9. Termination

At the expiration of this Agreement as to any Car, Lessee will surrender possession of such Car to BRAE free of refuse, and in good repair, condition and working order, by delivering the same to BRAE at such place reasonably convenient to Lessee as BRAE shall designate. For any Car not returned in the condition required hereby, Lessee shall be liable to BRAE for any and all cleaning, repair or servicing costs required to place such Car in such proper condition. A Car shall be no longer subject to this Agreement upon, at Lessee's expense, the removal of Lessee's railroad markings from such Car and the placing thereon of such markings as may be designated by BRAE, either at the option of BRAE, (1) by Lessee upon return of such Car to Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car; provided, however, that BRAE may make reasonable selection of a private contractor for the removal of Lessee's markings and application of new markings in lieu of removal and application by Lessee or such railroad line, at Lessee's expense. If such Car is not on the railroad line of Lessee upon termination, any cost of assembling, delivering storing, and transporting such Car to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by BRAE. After the removal and replacement of markings, Lessee shall use its best efforts to load such Car with freight and deliver it to a connecting carrier for shipment. Lessee shall provide up to thirty (30) days free storage on its railroad tracks for BRAE or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to Sections 6B, 6C or 8 hereof, or if BRAE agrees to the transfer of such Car to any railroad, as lessee or sublessee, which is an affiliate of Lessee, prior to the end of its lease term, Lessee shall be liable to BRAE for all costs and expenses incurred by BRAE to move any such Car to BRAE's subsequent lessee and to repaint such Car and place thereon the markings and name or other insignia of BRAE's subsequent lessee.

10. Indemnities

BRAE will defend, indemnify and hold Lessee harmless from and against (1) any and all claims based upon loss or damage to the Cars, unless occurring while Lessee has physical possession of the Cars and (2) any other type of claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars (unless occurring through the fault of Lessee), including without limitation claims with respect to the construction, purchase, delivery to Lessee's railroad line, ownership, leasing, return, use, maintenance, repair, replacement, operation or condition of the Cars, and claims caused by defects in the manufacture or workmanship of the Cars or any component thereof, or any material incorporated therein, which defects could not have been discovered upon reasonable inspection by Lessee.

11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated, has all necessary corporate power and authority, permits and licenses to perform its obligations under this Agreement, and has operating authority as common carrier by rail.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to BRAE in writing, nor is Lessee a party to any agreement or instrument nor subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the ability of the Lessee to perform its obligations under this Agreement.

(v) There is no fact or other matter represented by the Lessee in written or other form and delivered to BRAE which is false or incorrect in any material respect as of the date made.

12. Inspection.

BRAE shall at any time during normal business hours have the right to enter the premises of Lessee where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee agrees to use its best efforts to arrange for such inspections by BRAE of any Cars which may be located on property not owned by Lessee. Lessee shall immediately notify BRAE of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify BRAE in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to BRAE promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements submitted to the ICC or its shareholders generally.

13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not, without the prior written consent of BRAE, assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void. It is understood and agreed that BRAE may assign this Agreement with respect to some or all of the Cars listed on any Schedule hereto to any trust of which BRAE or one of its wholly-owned subsidiaries is a beneficiary, to any corporate joint venture of which BRAE or one of its wholly-owned subsidiaries is a stockholder, or to any other owner of such Cars (each hereinafter a "Lease Assignee"), provided that BRAE or one of its wholly-owned subsidiaries enters into a management agreement with such Lease Assignee with respect to the Cars. Upon delivery of a notice of assignment to Lessee, the term "BRAE" as used herein shall mean such Lease Assignee, and BRAE shall be relieved of all of its obligations and liabilities under this Agreement relating to such Cars. Lessee agrees to

give its consent and to acknowledge, upon receipt of notice of assignment, such assignment of this Agreement by BRAE. BRAE warrants that any Lease Assignee of the Cars will subject such Cars to all the terms and conditions of this Lease.

Lessee also agrees to acknowledge, upon receipt, any security assignment of this Agreement by BRAE, or by any Lease Assignee, to an owner or secured party under any financing agreement or lease entered into by BRAE or such Lease Assignee in connection with the acquisition of all or part of the Cars leased hereunder. Lessee hereby agrees that any such assignment may be with respect to all or part of the Cars on any Schedule hereto. Any assignment of this Agreement by BRAE or any Lease Assignee to an owner or secured party shall not subject that owner or secured party to any of BRAE's or such Lease Assignee's obligations hereunder. Those obligations shall remain enforceable by Lessee solely against BRAE or such Lease Assignee, as the case may be.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by BRAE in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 hereof and in furtherance of this Agreement. BRAE is expressly authorized to insert the appropriate railcar reporting markings and Car description on the Schedule(s) at such time as notice is delivered to BRAE by Lessee as to the correct reporting marks and physical description to be utilized.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

D. No failure or delay by BRAE shall constitute a waiver or otherwise affect or impair any right, power or remedy available to BRAE nor shall any waiver or indulgence by BRAE or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or three days after deposit in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth in the preamble to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

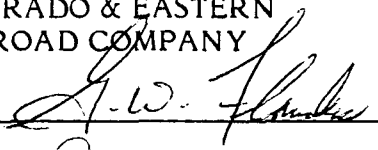
BRAE CORPORATION

By 

Title President

Date August 3, 1983

COLORADO & EASTERN
RAILROAD COMPANY

By 

Title President

Date June 16, 1983

EQUIPMENT SCHEDULE I

BRAE CORPORATION ("BRAE") hereby leases the following railcars to Colorado & Eastern Railroad Company ("Lessee"), pursuant to that certain Lease Agreement dated as of June 17, 1983 (the "Lease").

1.	<u>Number of Cars</u>	<u>Description</u>	<u>Designation</u>	<u>Car Numbers</u>	<u>Dimensions</u>
	16	Type: 100-ton high- sided used gondolas	GB	(to follow)	(to follow)

Capacity: (to follow)

Volume: (to follow)

2. BRAE and Lessee hereby incorporate by reference all of the terms, conditions and provisions of the Lease in this Schedule.

IN WITNESS WHEREOF, the parties have each caused their respective duly authorized officers to have executed this Schedule as of the date first written above.

BRAE CORPORATION

By

Title

COLORADO & EASTERN
RAILROAD COMPANY

By

Title

EQUIPMENT SCHEDULE 2

BRAE CORPORATION ("BRAE") hereby leases the following railcars to Colorado & Eastern Railroad Company ("Lessee"), pursuant to that certain Lease Agreement dated as of June 17, 1983 (the "Lease").

1.	<u>Number of Cars</u>	<u>Description</u>	<u>Designation</u>	<u>Car Numbers</u>	<u>Dimensions</u>
	9	Type: 100-ton high- sided used gondolas	GB	(to follow)	(to follow)

Capacity: (to follow)

Volume: (to follow)

2. BRAE and Lessee hereby incorporate by reference all of the terms, conditions and provisions of the Lease in this Schedule.

IN WITNESS WHEREOF, the parties have each caused their respective duly authorized officers to have executed this Schedule as of the date first written above.

BRAE CORPORATION

By

Title

COLORADO & EASTERN
RAILROAD COMPANY

By

Title

STATE OF Colorado
COUNTY OF El Paso

)
) SS
)

On this 16th day of June, 19 83, before me personally appeared A.W. Flanders, to me personally known, who being by me duly sworn, says that such person is A.W. Flanders, President of Colorado & Eastern Railroad Co., and that the foregoing Lease Agreement, and Equipment Schedule(s) No. 1 & 2 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

Sharon L. Summers (seal) My commission expires
Notary Public 6/4/84
75 So. Sierra Madre
Colorado Springs, CO 80903

STATE OF California
CITY AND COUNTY OF SAN FRANCISCO

)
) SS
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On this 3rd day of August, 19 83, before me personally appeared William J. DeFido, to me personally known, who being by me duly sworn, says that such person is President of Blue Corporation, and that the foregoing Lease Agreement, and Equipment Schedule(s) No. 1 & 2 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

Nancy M. Barry (seal)
Notary Public

